Supreme Court, U.S.
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No. 97-1472

In The

Supreme Court of the United States

October Term, 1997

MICHAEL A. HADDLE,

Petitioner,

v.

JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, Individually and as Trustee for certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITIONER'S REPLY BRIEF

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QUESTION PRESENTED FOR REVIEW

Does loss of "at will" employment give rise to compensable damage under 42 U.S.C. §1985(2)?

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PETITIONER'S REPLY BRIEF

This case concerns the damages recoverable for a violation of the right of a federal witness in a federal proceeding to be free from intimidation and retaliation. This Court granted certiorari to decide whether a witness who loses his at will employment because of his involvement in a federal proceeding is entitled to be compensated for the loss. This would not result in "converting the reconstruction-era civil rights acts into a general federal tort law" or "creating a new body of federal wrongful termination of employment remedies". A federal claim already exists for interference with a witness in a federal proceeding. This case concerns only whether such a witness' livelihood, if it exists at the will of his employer, is such an insubstantial interest as not to be protected by the statute.

Respondents argue that in the Fourteenth Amendment and in 42 U.S.C. §1981 and §1982 (derived from the Civil Rights Act of 1866), supplemented by judicial construction of 42 U.S.C. §1983, there exists a "substantial body of jurisprudence" establishing a uniform and invariable meaning for the word "property" as used in these enactments and in 42 U.S.C. §1985, a meaning which excludes at will employment from the category of property. They also assert that Congress' use of the words "depriving such person of employment or occupation" in the Enforcement Act of 1870, coupled with the use of more general language in §1985, shows an intent by Congress in the latter law to restrict it so as not to protect the interest of a worker in his employment, at will or otherwise. Such a reading disregards the different contexts in which the word "property" is used in these sections and

the historical relationship of these laws. It also ignores the substantial body of law which establishes that injuries such as those claimed by Petitioner Michael A. Haddle ("Haddle") are injuries to person or property.

1. Sections 1981 & 1982 (the Civil Rights Act of 1866)

Section 1981 has at least two parts, one concerned with the right "to make and enforce contracts" and one concerning "the full benefit and equal benefit of all laws and proceedings for the security of persons and property". Respondents argue that, since this Court has found that racial discrimination in employment comes under the "make and enforce contracts" portion of the statute, protection of employment cannot come under the "full benefit and equal benefit of all laws . . . for the security of persons and property" portion. They then infer that, since this phrase is similar to the phrase "injured in his person or property" as used in §1985, §1985 cannot have been intended to encompass rights in employment.

On the contrary, the use of the phrase "persons and property" in §1981 shows that when Congress used the phrase "injured in his person or property" in §1985 it intended an inclusive, global reach for this language and was not using the phrase in a restrictive sense. It is more natural to recognize that the phrase "persons and property" in §1981 was used to denote the full range of interests to be protected by existing state laws equally for black and white.

Patterson v. McLean Credit Union, 491 U.S. 164 (1989), the only case Respondents cite to support a restrictive

meaning for this phrase in §1981 (and then only by implication) cannot be construed as they urge. *Patterson* did not hold, either expressly or by implication, that the phrase "persons and property" does not encompass rights in employment. It holds that on-the-job racial harassment "is not actionable under §1981, which covers only conduct at the initial formation of the contract and conduct which impairs the right to enforce contract obligations through legal process." 491 U.S. at 180. Although Respondents surmise that this holding would have been unnecessary if "property" in the phrase "laws for the security of persons and property" included rights in employment, this in fact could not have been the case.

The plaintiff in *Patterson* did not claim that she was being denied the use of some state law which might have helped her in her claim of racial discrimination in employment. She made no claim that she was being denied the equal and full benefit of any law "for the security of persons or property". Her claim, and the Court's decision, involved only a construction of the phrase "make and enforce contracts". This Court in *Patterson* could not have avoided construction of the phrase "make and enforce contracts" by finding for the plaintiff under the "full benefit and equal benefit of all laws for the security of persons and property" language. Private racial discrimination would not involve a denial of the benefit of such laws. The plaintiff sought a federal remedy, not equal access to a state remedy. This Court held that she had a federal remedy, but only under Title VII of the Civil Rights Act of 1964, not under §1981. This Court's opinion says nothing, either expressly or by

implication, about the reach of the phrase "for the security of persons and property" or about the meaning of the word "property" in that phrase.

With respect to §1982, Respondents are simply wrong in citing five federal district court cases (only) for the proposition that "courts interpreting this provision of the reconstruction-era civil rights acts have not been willing to stretch the meaning of property so far as to encompass employment at will" (Respondents' Brief, p. 21). This is an overstatement of these decisions.

For example, the court in *Tate v. Hills-McCanna Co.*, 42 Fair Empl. Prac. Cas. (BNA) 138, 1982 WL 361 (N.D.Ill. June 16, 1982), rested its decision not on some invariable definition of "property" which supposedly governed the thinking of the Reconstruction era, but rather on the context of the word "property" in §1982 itself: "*Regardless of whether plaintiff had a property right in her continued employment,* that right is not the same as a real or personal property right within the meaning of §1982. While employment discrimination claims are not expressly excluded from §1982, the *wording of that provision* clearly limits its application to transactions in real and personal property, *such as leasing, selling and conveying such property.*" 1982 WL 361, *1 (emphasis supplied). *Abel v. Bonfanti*, 625 F.Supp. 263 (S.D.N.Y. 1985) says the same: "*Whatever property rights [the at will employee] may be able to establish regarding his alleged right to continued employment at [his employer]*, these rights are not those that can be inherited, purchased, leased, sold or conveyed, and, therefore, are not covered by §1982". 625 F.Supp. at 269 (emphasis supplied).

These cases are not premised on some definition of "property" to be mechanically applied to all Reconstruction-era enactments, but rather on the purpose and function of the word in its particular statutory context, the words which precede and condition it in the section itself. There is nothing in any of these five cases which even suggests that Congress, when it used the phrase "injured in his person or property" in §1985, had any thought of limiting the reach of the remedy it was providing.

The restrictions with which §1981 and §1982 have been hedged do not arise from the meaning of the words "property" or "persons and property" standing alone. In each case the interpretation of these words has depended on their context, and in particular on the surrounding words in the statutes. They say nothing about Congress' intention when, five years later, it used the expression "injured in his person or property" when creating a private claim for damages in what is now §1985.

This Court in *Patterson* quoted from its decision in *Georgia v. Rachel*, 384 U.S. 780 (1966), to emphasize the limited nature of the 1866 Act, from which both §1981 and §1982 derive: "The legislative history of the 1866 Act clearly indicates that Congress intended to protect only a limited category of rights." 491 U.S. at 176.

In the 1866 Act, Congress moved somewhat hesitantly, as the legislative history abundantly demonstrates, in the exercise of its new Fourteenth Amendment powers, to attempt to ensure that all state laws "for the security of persons and property" were available to blacks and whites alike.

Five years later, with the 1871 Act, Congress essayed a broader attack on the problem in the Southern states, involving the creation of new federal civil remedies. Its use of the phrase "injured in his person or property" in this new context should not be limited by its use of a different phrase in an earlier and quite different context.

2. The Enforcement Act of 1870

Respondents ask the Court to believe that Congress, in proscribing interference with federal court proceedings in the Civil Rights Act of 1871, intentionally employed more restrictive language in describing the reach of the statute than it did in the Civil Rights Act of 1870 (the Enforcement Act), proscribing interference with the right to vote. This argument is based entirely on the fact that in the earlier of the two acts Congress referred specifically to depriving a person of employment or occupation *sub eo nomine*. This reverses the historical relationship between these two laws.

The Civil Rights Act of 1871 was not passed because its predecessors, the Civil Rights Act of 1866, the Enforcement Act of 1870 and the Force Act of 1871, had been found to amount to statutory overkill. On the contrary, the 1871 Act evidences the conviction of Congress that these earlier measures were not sufficient to deal with the problems affecting the Southern states. It would be a strange canon of construction, in interpreting a series of measures addressed to a single over-arching problem, each more pervasive and drastic than its predecessor, to assume that limitations in the earlier enactments are to be read into the later, or that more general language in the

later is to be read as excluding misconduct more specifically described in the earlier.

Just as it makes no specific mention of "threats of depriving such person of employment or occupation", so §1985 likewise makes no mention of "threats of ejecting such person from rented house, lands, or other property" and other specific matters enumerated in the Enforcement Act. This does not mean that Congress did not intend to include all such injuries within the term "injured in his person or property" in §1985.

3. The Fourteenth Amendment, §1983 and §1985

The assertion that construction of the Fourteenth Amendment is a sure guide to construction of §1985 ignores the seminal case for modern §1985 jurisprudence, *Griffin v. Breckenridge*, 403 U.S. 88 (1971). This Court in *Griffin*, in establishing that "state action" is not required to constitute an actionable conspiracy under §1985, enunciated the principle later summarized in *United Brotherhood of Carpenters and Joiners v. Scott*, 463 U.S. 825 (1983), that, considering that "the section does not expressly refer to the Fourteenth Amendment", it is not "limited by the constraints of the Fourteenth Amendment." 463 U.S. at 832.

Logic does not support the theory that "injury to person or property", for which damages are available under §1985(2), must be no more extensive than "property" which the State may not take without due process

of law within the meaning of the Fourteenth Amendment.[1] In the context of at will employment, a suit under §1983, attempting to enforce the Fourteenth Amendment, *where no distinctly federal right* (such as the First Amendment) is involved, will always be a suit for procedural due process against a government employer. Any property interests the employee has in this situation will be statutory or quasi-statutory, arising from the employer itself, which is free to define the contours of the employment rights it grants as employer. *Cf. Arnett v. Kennedy*, 416 U.S. 134 (1974).

On the other hand, when a federally protected right is involved, regardless of whether that right exists by virtue of the Constitution as applied to the states through the Fourteenth Amendment, or is created by Congress to vindicate uniquely federal interests (such as the right to give evidence in a federal court without fear or retaliation), what is in question is not procedural due process at all. The purpose of the phrase "injured in his person or property", as used in §1985, has nothing to do with the procedural due process which must be accorded in a state deprivation of property. The phrase has to do with the specification of damages. When federal law defines an offense and prescribes a remedy to anyone "injured in his person or property" by its breach, "the rule of damages, whether drawn from federal or state sources, is a federal rule responsive to the need whenever a federal right is

[1] Respondents completely ignore the fact that Haddle's injury can be characterized as one to "person" as well as one to "property". See Haddle's Brief on the Merits, p.21, and the Brief of the United States as Amicus Curiae, p. 19 and footnote 18.

impaired." *Sullivan v. Little Hunting Park*, 396 U.S. 229, 240 (1989). Herein lies the relevance of *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979), cited in Haddle's Brief on the Merits. The phrase "injured in his person or property" should be illuminated by other uses of this phrase in the context of specifying damages, such as in the Clayton Act.

Here the only question to be addressed is whether a certain loss constitutes compensable damages under the statute. None of the cases Respondents cite actually holds that the word "property" does not encompass an employee's right in his at will employment, much less that loss of wages as a result of wrongful termination of employment is not an injury to person or property.

Although in its jurisprudence construing §1983 this Court has often spoken of "property interests", it has never lost sight of the fact that it is defining such interests for a particular purpose, such as procedural due process. *Roth v. Board of Regents*, 408 U.S. 564 (1972), is a good example:

> The requirements of *procedural due process* apply to *the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property*. When *protected* interests are implicated, the right to some kind of prior hearing is paramount. But the range of *interests protected by due process* is not infinite.
>
> 408 U.S. at 569-570
> (emphasis supplied).

Even as it discusses the nature of property, the Court is careful to delineate the question it is actually deciding, which is, in procedural due process cases like *Roth*,

whether the plaintiff possesses an interest protectable under the Fourteenth Amendment, not, as in the case now before the Court, whether and to what extent a plaintiff has been "injured in his person or property".

This distinction is well-illustrated in First Amendment cases such as *Doyle v. Mt. Healthy City Sch. Dist. Bd. of Educ.*, 429 U.S. 274 (1979). In that case the Court had no trouble agreeing that, even though the plaintiff's employment was at will, so that he was not entitled to procedural due process in connection with his dismissal, nevertheless if he was terminated for a federally proscribed reason, he suffered monetary damages from loss of his salary. 429 U.S. at 277.

The idea that the phrase "injured in his person or property" is to be given a restrictive meaning in §1985 is at odds with the use made of the statute to date. In *Malley-Duff & Associates v. Crown Life Ins. Co.*, 792 F.2d 341 (CA 3 1986), *affirmed on other grounds*, 483 U.S. 143 (1987), for instance, the court, rejecting a "crabbed and unwarranted" interpretation of what would constitute damage to a litigant arising from intimidation of witnesses, found that "delays, expenses, inconvenience, and the suppression of evidence during the pretrial phase" of a case would be cognizable damage. 792 F.2d at 355.

A litigant in a federal proceeding is given a remedy under §1985(2). Yet a litigant, no less than a witness, must be "injured in his person or property" in order to recover under the statute. Respondents would confine "person or property" as used in the statute to either (a) physical injury or (b) injury to property defined restrictively to apply only to indefeasible interests "which in no way

depend on another man's courtesy". Under such an argument it would hardly be possible for a litigant to be injured by a conspiracy to intimidate his witnesses. It is surely unlikely that the litigant, as opposed to the witnesses, will be physically injured by such a conspiracy. Just as clearly, the hampering of a litigant's case, which has repeatedly been held to be the kind of injury to a litigant for which the statute gives relief, can hardly be classed as an injury to property in Respondents' restrictive sense. A case in which a litigant is deprived of the testimony of a witness, because of intimidation of the witness, would not be a case of injury to the person or property of the litigant under Respondents' proposed test. Surely the loss of testimony is no more substantial an injury than loss of livelihood. On this view, the statute would fail of one of its clearest purposes. It would be a rare case indeed in which a conspiracy to intimidate witnesses resulted in an injury to a litigant's person or property as defined by Respondents.

4. Contemporary understanding of employment rights and at will employment

Respondents place great stress on the case of *Adair v. United States*, 208 U.S. 161 (1908), asserting that it represents the state of the law all during the 19th century. *Adair*, however, even the very passage quoted by Respondents, strongly supports Haddle.

The issue in *Adair* was whether Congress could pass a law preventing an employer from discharging employees because they refused to join a labor union. The Court found that such a law deprived the employer of his

right to contract with whom he would for services. The Court described this as both a personal and a property right: the "right – and that right inhered in his personal liberty, was also a right of property". 208 U.S. at 172. The Court buttressed this conclusion with the following quotation from Cooley on Torts:

> *It is a part of every man's civil rights* that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. *It is also his right to have business relations with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress.*
>
> 208 U.S. at 173
> (emphasis supplied).

The present case is not about the right of an employer to discharge his at will employee. Some future case before this Court may involve that right, but in this case the persons charged with conspiracy are not Haddle's employer. Respondents' theory is simply that, because the employer could discharge the employee at will, the employee has no damages if third persons conspire to deprive him of his employment. This assertion is conclusively refuted by the very quotation from *Adair*, quoting Cooley, which Respondents adduce purportedly in their support. Mr. Cooley states as plainly as can be that an individual has the right to have business relations with whom he pleases, and if he is wrongfully deprived of that right by a third party, he is entitled to redress. Further, interference with this right can be tortious even

when the right arises only from an at will employment relationship. See *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229, 251-252 (1917), quoting *Truax v. Reich*, 239 U.S. 33 (1915).

This is the background against which the provisions of §1985(2) were enacted. Nothing can be plainer than that at common law one deprived of his employment, at will or otherwise, by third persons was injured in his person or property. This is the clear and indeed inescapable implication of the language of this Court used in *Adair*, as well as being the express purport of this Court's language in *Truax v. Reich*, 239 U.S. 33 (1915), as quoted in Haddle's Brief on the Merits.

"Invasion of the right to earn a livelihood free from undue influence or molestation is an actionable infringement of a property right, even if no existing contract relation is disturbed." 45 Am.Jur.2d, "Interference", §51. "[T]he right to pursue a lawful occupation is a property right, and the wrongful interference therewith is an actionable wrong." *International Union v. Russell*, 264 Ala. 456, 88 So.2d 175 (Ala. 1956), *affirmed*, 356 U.S. 634 (1958), *reh. den.*, 357 U.S. 944 (1958).[2]

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[2] The authorities cited by Respondents for a contrary conclusion have absolutely nothing to do with at will employment or interference with employment. For example, *Jackson v. Housel*, 17 Johns. 280 (N.Y. Sup. Ct. 1820), upon which Respondents rely for their restrictive definition of property, is actually a will case in which the court found that a reference to "my property" bequeathed an entire fee rather than just a trust interest. The court was concerned to demonstrate the breadth of the term, not some restriction on it. There was no consideration of whether an interest, even if defeasible in some way, is

In the very year of passage of the Civil Rights Act of 1871, the Supreme Judicial Court of Massachusetts, in a careful opinion, found that interference with at will employment is the tortious invasion of a property right, redressable in damages. *Walker v. Cronin*, 107 Mass. 555 (1871). See especially pp. 563-564. Finding that a "malicious act . . . done to a man's occupation, profession, or way of getting a livelihood" is an injury "in respect of his property", for which "an action lies in all cases", the court allowed such an action to a manufacturer for interference with his workmen, even those who were not bound to him by contract. The principle would surely also work in reverse, to give a parallel right to the workman, as this Court recognized in *Truax, supra*.

5. Adequacy of other remedies

Respondents' arguments that Haddle had other adequate remedies at state law and that federal criminal law is a sufficient deterrent to witness tampering are beside the point. This Court has often found that, except in cases of irreconcilable conflict, the passage of a more specific civil rights measure in the modern era does not impliedly repeal the provisions of the Reconstruction era statutes. *Runyon v. McCrary*, 427 U.S. 160, 173, footnote 10 (1976). *Johnson v. Railway Express Agency*, 421 U.S. 454, 457-461 (1975). *Sullivan v. Little Hunting Park*, 396 U.S. 229, 237-238 (1969). A fortiori, the fact that Congress has provided in the False Claims Act for an action by an

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nevertheless property protectable against third person. Similarly, *Reed v. Inhabitants of Belfast*, 20 Me. 246 (1841), simply has nothing to do with the issue presented here.

employee *against his employer* (in Haddle's case, a bankrupt at the relevant time) for retaliation should not work a repeal of §1985's right of action against third parties for conspiring to retaliate. Moreover, it would be a strange canon of construction indeed which considered that the existence of a criminal remedy should foreclose a civil rights action by the injured party.

6. Alternative Bases

Respondents argue that only litigants in federal proceedings, not witnesses, can have standing under §1985(2). For this curious and counter-intuitive interpretation, Respondents can cite only *David v. United States*, 820 F.2d 1038 (9th Cir. 1987).[3] Other cases referenced by Respondents actually relate to the standing of a *party* to federal proceedings.[4]

The Ninth Circuit in *David* cited no authority for its view that a witness who is injured by a conspiracy to intimidate witnesses or retaliate against them has no standing and has suffered no cognizable injury under §1985(2). 820 F.2d at 1040. The Seventh Circuit in *Rylewicz v. Beaton Services, Ltd.*, 888 F.2d 1178 (7th Cir. 1989), following *David*, attempted to construct a reasoned basis for eliminating standing for witnesses under §1985(2),

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[3] As the United States has pointed out in its Brief as Amicus Curiae, p. 29, fn.1, this contention is not fairly included in the question presented by the petition for certiorari and was not addressed by the District Court or the Court of Appeals.

[4] *Rode v. Dellarciprete*, 845 F.2d 1195 (3rd Cir. 1988), cited by Respondents, involved a claimant who was neither a litigant nor a witness in a federal proceeding.

even though this was unnecessary for the result in the case, by referring to the use of the word "party" in the remedial final portion of §1985 ("the party so injured or deprived"), arguing that the word has a restrictive meaning at this point in the statute, excluding witnesses.

This theory is refuted by the legislative history of the 1871 Act. The word "party" appears three times in §1985, twice in subsection (2) and once at the end, where it is the source of the argument regarding lack of standing in a witness. This last use was not in the Act as passed in 1871, which used the word "person" instead. The substitution of "party" for "person" was added by the compilers of the Revised Statutes later in the century with no intent to change the substance of the provision. See Brief of the United States as Amicus Curiae, pp. 29-30, footnote 27, and p. 7, footnote 2. The first two uses of the word "party", in subsection (2) where it appears in the phrase "party or witness", were added at the time of original passage, specifically to make it clear that the statute was intended to protect witnesses *and* litigants. Senator Edmunds, a manager of the bill in the Senate, explained the purpose of the addition in language that incidentally leaves no doubt of the intention of Congress to protect witnesses with a civil damage remedy. *Congressional Globe*, 42nd Congress, 1st Sess., Pt. I, p. 567 (beginning with "so when you go to the bottom of the same page" and continuing through "for he would be dead and gone.").

Respondents' second proposed alternative basis, the argument that liability under §1985(2) requires "force, intimidation or threat", and that firing a man for testifying in federal court is neither, is likewise not properly

before the Court, not having been the basis for the decision below and not being fairly within the question presented on certiorari. In any event, it contradicts the plain wording of the statute, which reads in pertinent part as follows:

> If two or more persons in any State or territory conspire to deter, by force, intimidation, or threat, any party or witness . . . from attending court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified . . . .
>
> 42 U.S.C. §1985(2)

This language speaks of two sorts of conspiracies: (1) those "to deter" from "attending" or "testifying" and (2) those "to injure" . . . "on account of . . . having . . . attended or testified." Grammar alone shows that the phrase "by force, intimidation or threat" modifies only conspiracies "to deter", not those "to injure on account of having attended or testified." While admittedly grammar cannot be a conclusive guide to the meaning of a statute, where there is other evidence to suggest its purpose or where if construed grammatically the statute would fail of its purpose, surely grammar should not be disregarded in construing a highly remedial statute such as this, when to do so would narrow its scope for no discernible purpose and would not advance any concern of the law.[5]

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[5] Finding nothing in the text of §1985(2) to justify a restrictive interpretation, Respondents resort to the dissent of Judge Meskill in *Keating v. Carey*, 706 F.2d 377, 392 (CA 2 1983),

Further, Haddle alleged not only that his firing was in retaliation for his attending the grand jury proceedings and being prepared to testify at trial, but also that it was intended to "intimidate" him and others from testifying at trial. J.A. 21 (para. 18 & 19) His case should not be dismissed on a Rule 12(b)(6) motion for failure to allege intimidation. There is no reason in the text of the statute or in fact why "intimidation" should require either force or verbal threat. See Brief of United States as Amicus Curiae, pp. 24-28.

7. State Law

Respondents argue at considerable length, what Haddle does not deny for the purposes of this case, that he has no claim for wrongful termination under Georgia law against his employer. The relevance of this fact is difficult to see. First, Haddle is not trying to proceed under Georgia law. Second, Haddle is not trying to proceed against his employer. If Georgia law is to be consulted at all, surely in the context of this case it should be

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where Judge Meskill argues forcefully, but without any supporting precedent whatsoever, that the reach of §1985 should be severely restricted. He writes that "[a]lthough noble in purpose, the objective of the 1871 Act was limited, to protect blacks and black sympathizers from rampant vigilantism in the South and to ensure these oppressed groups access to the courts and polling places" (706 F.2d at 390) and further that he takes a "narrow, historical view of §1985". *Id.* at 392. This approach to the interpretation of §1985 (and other Reconstruction provisions) not only disregards the plain text but is also the polar opposite of that taken by this Court in all of its recent jurisprudence and appears to be a throwback to the judicial policy of the last century.

consulted only to determine whether someone in Haddle's position has a "property right" in his employment under Georgia law, protectable against anybody. Here, the answer is yes by express holding of Georgia courts. *Troy v. Interfinancial, Inc.*, 171 Ga. App. 763, 766 320 S.E.2d 872, 877 (1984), *cert. denied.*

CONCLUSION

As part of the Civil Rights Act of 1871, Congress has given a damage remedy to a person who is "injured in his person or property" by a conspiracy to intimidate or retaliate against him on account of his having attended or testified in a federal court proceeding. §1985, like §1983, manifestly creates "a species of tort liability", as to which recoverable damages are "ordinarily determined according to principles derived from the common law of torts". *Carey v. Piphus*, 435 U.S. 247, 253, 257-258 (1978) (as to §1983). In the era when the Act was passed, it was well-recognized in the law that the right of every person "to make use of his labor on his own behalf, or to hire it out in the service of others" was "one of the first and foremost of civil rights." T. M. Cooley, *Treatise on the Law of Torts* (1880), p. 276. The law recognized, moreoever, then as now, that an at will employee, although he might be discharged at common law by his employer without liability, nevertheless possessed a valuable right in his employment which could not be interfered with by a third person with impunity. Legislating against this background, Congress had no reason to and did not exclude from its remedial purpose the protection of the livelihood of an at will laborer.

The judgment of the United States Court of Appeals for the Eleventh Circuit should be reversed, and the case remanded with instructions to reinstate the complaint.

Respectfully submitted,

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